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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTIAN RICARDO LOPEZ,

Defendant and Appellant.

E070845

(Super.Ct.No. FVI1402277)

OPINION

APPEAL from the Superior Court of San Bernardino County. Corey G. Lee,
Judge. Affirmed.

Christian Ricardo Lopez, in pro. per.; and Kevin J. Lindsley, under appointment
by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On July 9, 2014, an information charged defendant and appellant Christian Ricardo Lopez with 10 counts of torture under Penal Code¹ section 206 (counts 1, 3, 5, 7, 9, 12, 14, 16, 18, 20); 10 counts of child abuse under section 273a, subdivision (a) (counts 2, 4, 6, 8, 11, 13, 15, 17, 19, 21); and one count of aggravated mayhem under section 205 (count 10). The information also alleged that defendant personally inflicted great bodily injury under section 12022.7, subdivision (d), as to the child abuse counts (counts 2, 4, 6, 8, 11, 13, 15, 17, 19, 21).

On May 17, 2018, the People made an oral motion to amend the information to add an attempted murder count under sections 664 and 187 (count 22). On the same day, pursuant to a negotiated plea agreement, defendant pled no contest to (1) attempted murder under sections 664 and 187 (count 22); and (2) seven counts of child abuse under section 273a, subdivision (a) (counts 2, 4, 6, 8, 11, 13, 15). Defendant also admitted that he personally inflicted great bodily injury under section 12022.7, subdivision (d), as to counts 2, 4, 6, 8, 11, and 13. The trial court dismissed the remaining counts.

On June 28, 2018, the trial court sentenced defendant to 29 years in state prison. On July 5, 2018, defendant filed a timely notice of appeal “based on the sentence or other matters occurring after the plea.”

¹ All further statutory references are to the Penal Code unless otherwise specified.

On February 1, 2019, defendant filed a letter requesting appointment of new counsel on appeal. On March 27, 2019, we declined to rule on defendant's request. Instead, we directed the clerk of this court "to provide a copy of the letter to Appellate Defender's, Inc." and requested that Appellate Defenders, Inc. "review the request and take any appropriate action."

B. FACTUAL HISTORY

On June 17, 2014, San Bernardino Sheriff's Deputy David Clifford investigated a case involving an infant. Deputy Clifford interviewed the mother, Maria Estrada. Estrada lived with her boyfriend, defendant. Estrada told the deputy that defendant cared for the child when Estrada would run errands. Defendant had difficulty when the child cried; defendant squeezed the child and placed the child's mouth against his bicep muscle to get the child to stop crying.

Deputy Clifford interviewed defendant. When the deputy asked defendant if he was aware that Estrada's child had been injured, he initially denied having any knowledge about the child's injuries. However, when the deputy confronted defendant about Estrada's statements regarding anger issues and injuries to the child, defendant apologized for lying and agreed to "tell [the deputy] everything. In January 2014, when the child was crying, defendant picked the child up, put his head against defendant's biceps to smother the crying, and squeezed the baby as hard as he could until he heard the child's breast bones crack. The child was two weeks old at the time. Neither defendant nor Estrada sought medical attention for the child.

In February 2014, a similar incident occurred. The child was crying; in order to get him to stop, defendant squeezed the child so hard the child defecated. There was a third incident, in the same month, where defendant pulled the child's arm with excessive force such that defendant heard the bone in the child's arm crack. The arm "was just dangling immobile." Later in the same month of February, defendant "wrapped the victim's arms around his own body and then wrapped [defendant's] arms around the victim's body and squeezed inward towards [defendant's] body, and squeezed down until he heard a cracking sound. . . . From the victim's chest area."

Thereafter, in March of April of 2014, when defendant returned home, the child was crying excessively. Defendant struck the child in the face with the palm of his hand, causing a tear and laceration to the child's gum, causing the gum to bleed. Defendant and Estrada "refused to seek medical attention for the victim out of fear of getting caught or in trouble for the injuries that the victim had." Defendant told Deputy Clifford that in May of 2014, defendant returned home and was angry. He picked up the child and bit through his ear. Defendant felt his teeth come together biting through the ear. Defendant cleaned the child's ear with rubbing alcohol and could see white cartilage where he had bitten through the ear. They did not seek medical attention for the child.

Defendant told Deputy Clifford about an incident in May of 2014. When defendant returned home, he was irritated that the house was messy. "So he went into the rear bedroom where the victim was, and he bent the legs of the victim, like if you are changing a diaper, but he bent them back into the body. And he squeezed them down with excessive force until he heard what he described as a bone crack." Then, just an

hour later, as defendant was changing the child's diaper again, "he lifted up [the child's] leg in the same manner and bent it straight back into his body again, hearing a subsequent second crack." Thereafter, later in May, defendant again wrapped the child's arms around his own body and squeezed until defendant heard a cracking sound from the child's chest.

Defendant further told Deputy Clifford that in June of 2014, defendant placed his hands around the child's neck and elevated him for 10 to 15 seconds. Defendant told the deputy that he squeezed as hard as he could and the child turned pale. Later in June, defendant stated that when he was bothered by the child's excessive crying, he grabbed the child by the scalp, holding on to a clump of the child's hair, and lifted the child off the bed. The child fell back onto the bed and defendant was left holding a clump of the child's hair in his hand. When defendant asked Estrada what to do, she told him to throw the clump of hair away.

When Deputy Clifford saw the child for the first time, he appeared to be "extremely malnourished . . . [his] eyes were extremely huge [and h]is pupils were dilated. The child's left arm was bent back and stuck in that position. Moreover, the deputy saw a healing laceration on the child's upper left ear and a healing injury on the child's upper lip. Deputy Clifford spoke with Dr. Sheridan-Matney, a forensic pediatrician. The doctor told Deputy Clifford that she examined the child over a period of two days. Dr. Sheridan-Matney reported that the child suffered from 18 different bone fractures, was severely malnourished, and had nerve damage in his brain from either being "sh[aken] violently or . . . slammed down onto the ground with excessive force.

The doctor described all of the injuries as consistent with defendant's account of how defendant had injured the child, including an injury not reported by defendant, where the child's toe was injured and it appeared to have been bitten. The doctor told the deputy that at six months, the child weighed 11 pounds 7.4 ounces, which was "under the fifth percentile for the weight/age comparisons for children at that age," and without hospitalization, the child would have died.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. On February 26, 2019, counsel filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record. We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. However, in defendant's letter requesting appointment of new counsel on appeal, it appears that defendant is claiming that he did not intentionally commit the crimes to which he pled no contest. Defendant is precluded from challenging the validity of his plea on appeal because he failed to timely obtain a certificate of probable cause. "A guilty [or no contest] plea amounts to an admission of every element of the crime and is the equivalent of a conviction." (*People v. Ward* (1967) 66 Cal.2d 571, 574; *People v. Mendez* (1999) 19 Cal.4th 1084, 1094.) "No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere . . . except where **both** of the following are met: [¶] (a) The defendant has filed with the trial court a written statement,

executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.” (§ 1237.5, italics & boldface added.) In this appeal, neither an executed written statement nor a certificate of probable cause was filed. We, therefore, cannot address the merits of defendant’s no contest plea.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.